

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT
RELATING TO PUBLIC FINANCE; REMOVING INVESTMENT LIMITATIONS
AND ESTABLISHING STANDARDS FOR PRUDENT INVESTMENT OF THE LAND
GRANT PERMANENT FUNDS, THE SEVERANCE TAX PERMANENT FUND, THE
EDUCATIONAL RETIREMENT FUND AND OF FUNDS ADMINISTERED
PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT; AMENDING AND
REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-8-7 NMSA 1978 (being Laws 1957,
Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--
INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and
restrictions contained in policy-making regulations or
resolutions adopted by the council and subject to prior
authorization by the council, the state investment officer
may make purchases, sales, exchanges, investments and
reinvestments of the assets of all funds administered under
the supervision of the council in accordance with the Uniform
Prudent Investor Act. The state investment officer shall see
that money invested is at all times handled in the best
interests of the state.

B. The state investment officer shall formulate
and recommend to the council for approval investment

1 regulations or resolutions pertaining to the kind or nature
2 of investments and limitations, conditions and restrictions
3 upon the methods, practices or procedures for investment,
4 reinvestment, purchase, sale or exchange transactions that
5 should govern the activities of the investment office.

6 C. The council shall meet at least once each
7 month, and as often as exigencies may demand, to consult with
8 the state investment officer concerning the work of the
9 investment office. The council shall have access to all
10 files and records of the investment office and shall require
11 the state investment officer to report on and provide
12 information necessary to the performance of council
13 functions. The council may hire one or more investment
14 management firms to advise the council with respect to the
15 council's overall investment plan for the investment of all
16 funds managed by the investment office and pay reasonable
17 compensation for such advisory services from the assets of
18 the applicable funds, subject to budgeting and appropriation
19 by the legislature. The terms of any such investment
20 management services contract shall incorporate the statutory
21 requirements for investment of funds under the council's
22 jurisdiction.

23 D. All funds managed by the state investment
24 officer shall be managed in accordance with the Uniform
25 Prudent Investor Act. With the approval of the council, the

1 state investment officer may employ investment management
2 services to invest the funds and may pay reasonable
3 compensation for investment management services from the
4 assets of the applicable funds, subject to budgeting and
5 appropriation by the legislature.

6 E. For funds available for investment for more
7 than one year, the state investment officer may contract with
8 any state agency to provide investment advisory or investment
9 management services, separately or through a pooled
10 investment fund, provided the state agency enters into a
11 joint powers agreement with the council and that state agency
12 pays at least the direct cost of such services.

13 Notwithstanding any statutory provision governing state
14 agency investments, the state investment officer may invest
15 funds available from a state agency pursuant to a joint
16 powers agreement in any type of investment permitted for the
17 land grant permanent funds under the prudent investor rule.

18 In performing investment services for a state agency, the
19 council and the state investment officer are exempt from the
20 New Mexico Securities Act of 1986. As used in this
21 subsection, "state agency" means any branch, agency,
22 department, board, instrumentality, institution or political
23 subdivision of the state, the New Mexico finance authority
24 and any tax-exempt private endowment entity whose sole
25 beneficiary is a state agency.

1 F. The state investment officer shall provide
2 quarterly performance reports to the legislative finance
3 committee. Annually, the state investment officer shall
4 ratify and provide written investment policies, including any
5 amendments, to the legislative finance committee."

6 Section 2. Section 6-8-20 NMSA 1978 (being Laws 1987,
7 Chapter 219, Section 3, as amended) is amended to read:

8 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
9 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
10 INTEREST.--

11 A. There is created the "private equity investment
12 advisory committee" to the council. The committee consists
13 of the state investment officer, a member of the council
14 appointed by the governor and three members who are qualified
15 by competence and experience in finance and investment and
16 knowledgeable about the private equity investment process and
17 who are appointed by the governor.

18 B. Members appointed by the governor, except the
19 council member, shall be appointed for three-year terms;
20 provided that the terms of the initial committee members
21 shall be staggered so that the term of one member expires
22 each year. After the initial appointments, all
23 governor-appointed members shall be appointed for three-year
24 terms. Members shall serve until their successors are
25 appointed. A vacancy occurring other than by expiration of

1 term shall be filled in the same manner as the original
2 appointment, but only for the unexpired term.

3 C. The committee shall review and make
4 recommendations to the council on investments authorized
5 pursuant to Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and
6 all other private equity investments and shall advise the
7 council in matters and policies related to such investments.
8 The committee shall establish policies for national private
9 equity fund investments, New Mexico private equity fund
10 investments and New Mexico film private equity fund
11 investments not less often than annually and shall make
12 copies available to interested parties.

13 D. Members of the committee shall receive per diem
14 and mileage as provided for nonsalaried public officers in
15 the Per Diem and Mileage Act and shall receive no other
16 compensation, perquisite or allowance.

17 E. The committee shall elect annually a chairman
18 from among its members and may elect other officers as
19 necessary. The committee shall meet upon the call of the
20 chairman or the state investment officer.

21 F. Members of the committee are public employees
22 within the meaning of the Tort Claims Act and are entitled to
23 all immunity and indemnification provided under that act.

24 G. A person shall not be a member of the committee
25 if any recommendation, action or decision of the committee

1 will or is likely to result in direct, measurable economic
2 gain to that person or that person's employer.

3 H. The state investment officer may enter into
4 contracts with investment advisors for private equity fund
5 investments and film fund investments authorized pursuant to
6 Sections 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other
7 private equity investments and may pay budgeted expenses for
8 the advisors from the assets of any fund administered under
9 the supervision of the council, as applicable.

10 I. As used in this section, "private equity
11 investments" means any legal entity that has as its primary
12 business activity the investment of funds in return for
13 equity in or debt of businesses for the purpose of providing
14 capital for startup, expansion, new product development,
15 recapitalization or a similar business purpose."

16 Section 3. Section 7-27-5 NMSA 1978 (being Laws 1983,
17 Chapter 306, Section 7, as amended) is amended to read:

18 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--
19 The severance tax permanent fund shall be invested in
20 separate differential rate and market rate investment
21 classes. "Differential rate investments" are permitted in
22 Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through
23 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA
24 1978 and are intended to stimulate the economy of New Mexico
25 and to provide income to the severance tax permanent fund.

1 "Market rate investments" are investments that are not
2 differential rate investments and are intended to provide
3 income to the severance tax permanent fund. All market rate
4 investments and differential rate investments shall be
5 invested in accordance with the Uniform Prudent Investor Act
6 and shall be accounted for in accordance with generally
7 accepted accounting principles."

8 Section 4. Section 10-11-132 NMSA 1978 (being Laws
9 1987, Chapter 253, Section 132, as amended) is amended to
10 read:

11 "10-11-132. INVESTMENT OF FUNDS--PRUDENT INVESTOR
12 STANDARD--INDEMNIFICATION OF BOARD MEMBERS.--The funds
13 created by the state retirement system acts are trust funds
14 of which the retirement board is trustee. Members of the
15 retirement board jointly and individually shall be
16 indemnified by the state from the funds administered by the
17 retirement board from all claims, demands, suits, actions,
18 damages, judgments, costs, charges and expenses, including
19 court costs and attorney fees and against all liability
20 losses and damages of any nature that members shall or may
21 sustain by reason of any decision made in the performance of
22 their duties pursuant to the state retirement system acts.
23 The retirement board shall invest and reinvest the funds in
24 accordance with the Uniform Prudent Investor Act."

25 Section 5. Section 10-11-133 NMSA 1978 (being Laws

1 1987, Chapter 253, Section 133, as amended) is amended to
2 read:

3 "10-11-133. INVESTMENT OF FUNDS--PRUDENT INVESTOR
4 STANDARD--CONDITIONS.--

5 A. Commissions paid for the purchase and sale of
6 any security shall not exceed brokerage rates prescribed and
7 approved by stock exchanges that have been approved by or are
8 under the control of the United States securities and
9 exchange commission or by industry practice.

10 B. The retirement board shall invest and manage
11 the funds administered by the retirement board in accordance
12 with the Uniform Prudent Investor Act.

13 C. The retirement board shall provide quarterly
14 performance reports to the legislative finance committee and
15 the department of finance and administration. Annually, the
16 retirement board shall ratify and provide its written
17 investment policy, including any amendments, to the
18 legislative finance committee and the department of finance
19 and administration.

20 D. Securities purchased with money from or held
21 for any fund administered by the retirement board and for
22 which the retirement board is trustee shall be in the custody
23 of the state treasurer who shall, at the direction of the
24 retirement board, deposit with a bank or trust company the
25 securities for safekeeping or servicing.

1 E. The retirement board may consult with the state
2 investment council or state investment officer and request
3 information or advice with respect to the retirement board's
4 overall investment plan, may utilize the services of the
5 state investment council and state investment officer and may
6 act on their advice concerning the plan. The state
7 investment council and state investment officer shall render
8 investment services to the retirement board without expense
9 to the retirement board. The retirement board may also
10 employ the investment management services and related
11 management services of a trust company or national bank
12 exercising trust powers or of an investment counseling firm
13 or brokers for the purchase and sale of securities,
14 commission recapture and transitioning services and may pay
15 reasonable compensation for such services from funds
16 administered by the retirement board. The terms of any such
17 investment management services contract shall incorporate the
18 statutory requirements for investment of funds under the
19 retirement board's jurisdiction.

20 F. Except as provided in the Public Employees
21 Retirement Act, a member of the retirement board, employee of
22 the retirement board or any person connected with the
23 retirement board in any manner shall not:

24 (1) have any direct or indirect interest in
25 the gains or profits of any investment made by the retirement

1 board;

2 (2) receive any direct or indirect pay or
3 emolument for services provided to the retirement board or
4 the association;

5 (3) directly or indirectly, for the member,
6 employee or person, for themselves or as agent or partner of
7 others, borrow any of the funds or deposits of the
8 association or in any manner use them except to make current
9 and necessary payments authorized by the retirement board; or

10 (4) become an endorser or surety or become
11 in any manner an obligor for money of the retirement board
12 loaned or borrowed."

13 Section 6. Section 22-11-13 NMSA 1978 (being Laws 1967,
14 Chapter 16, Section 137, as amended) is amended to read:

15 "22-11-13. BOARD AUTHORITY TO INVEST THE FUND--PRUDENT
16 INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

17 A. The board is authorized to invest or reinvest
18 the fund in accordance with the Uniform Prudent Investor Act.

19 B. The board shall provide quarterly performance
20 reports to the legislative finance committee and the
21 department of finance and administration. Annually, the
22 board shall ratify and provide its written investment policy,
23 including any amendments, to the legislative finance
24 committee and the department of finance and administration.

25 C. The board or its designated agent may enter

1 into contracts for the temporary exchange of securities for
2 the use by broker-dealers, banks or other recognized
3 institutional investors, for periods not to exceed one year,
4 for a specified fee or consideration. Such a contract shall
5 not be entered into unless the contract is fully secured by a
6 collateralized, irrevocable letter of credit running to the
7 board, cash or equivalent collateral of at least one hundred
8 two percent of the market value of the securities plus
9 accrued interest temporarily exchanged. This collateral
10 shall be delivered to the state fiscal agent or its designee
11 contemporaneously with the transfer of funds or delivery of
12 the securities. Such contract may authorize the board to
13 invest cash collateral in instruments or securities that are
14 authorized fund investments and may authorize payment of a
15 fee from the fund or from income generated by the investment
16 of cash collateral to the borrower of securities providing
17 cash as collateral. The board may apportion income derived
18 from the investment of cash collateral to pay its agent in
19 securities lending transactions.

20 D. Commissions paid for the purchase or sale of
21 any securities pursuant to the provisions of the Educational
22 Retirement Act shall not exceed brokerage rates prescribed
23 and approved by national stock exchanges or by industry
24 practice.

25 E. Securities purchased for the fund shall be held SB 392
Page 11

1 in the custody of the state treasurer. At the direction of
2 the board, the state treasurer shall deposit with a bank or
3 trust company the securities for safekeeping or servicing.

4 F. The board may consult with the state investment
5 council or the state investment officer; may request from the
6 state investment council or the state investment officer any
7 information, advice or recommendations with respect to
8 investment of the fund; may utilize the services of the state
9 investment council or the state investment officer; and may
10 act upon any advice or recommendations of the state
11 investment council or the state investment officer. The
12 state investment council or the state investment officer
13 shall render investment advisory services to the board upon
14 request and without expense to the board. The board may also
15 employ the investment management services and related
16 management services of a trust company or national bank
17 exercising trust powers or of an investment counseling firm
18 or brokers for the purchase and sale of securities,
19 commission recapture and transitioning services and may pay
20 reasonable compensation for those services from funds
21 administered by the board.

22 G. Members of the board, jointly and individually,
23 shall be indemnified from the fund by the state from all
24 claims, demands, suits, actions, damages, judgments, costs,
25 charges and expenses, including court costs and attorney

1 fees, and against all liability, losses and damages of any
2 nature whatsoever that members shall or may at any time
3 sustain by reason of any decision made in the performance of
4 their duties pursuant to this section."

5 Section 7. REPEAL.--

6 A. Sections 6-8-9, 6-8-17 through 6-8-19 and
7 6-8-21 NMSA 1978 (being Laws 1957, Chapter 179, Section 9,
8 Laws 1970, Chapter 2, Sections 1 and 2, Laws 1987, Chapter
9 126, Section 1 and Laws 1997, Chapter 183, Section 5, as
10 amended) are repealed.

11 B. Sections 7-27-5.1, 7-27-5.6, 7-27-5.16,
12 7-27-5.23 and 7-27-5.25 NMSA 1978 (being Laws 1983, Chapter
13 306, Section 8, Laws 1987, Chapter 219, Section 2, Laws 1990,
14 Chapter 127, Section 10, Laws 1997, Chapter 45, Section 3 and
15 Laws 2000, Chapter 5, Section 4, as amended) are repealed.

16 Section 8. ACT NOT SEVERABLE.--If any part or
17 application of this act is held invalid, the remainder or its
18 application to other situations or persons shall likewise be
19 invalid. The provisions of this act are not severable.

20 Section 9. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2005. _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25